



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG-2013-1006]

RIN 1625-AC14

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability —  
Vessels, Deepwater Ports and Onshore Facilities

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is issuing a final rule to increase the limits of liability for vessels, deepwater ports, and onshore facilities, under the Oil Pollution Act of 1990, as amended (OPA 90), to reflect significant increases in the Consumer Price Index (CPI). This final rule also establishes a simplified regulatory procedure for the Coast Guard to make future required periodic CPI increases to these OPA 90 limits of liability. These regulatory inflation increases to the limits of liability are required by OPA 90 and are necessary to preserve the deterrent effect and “polluter pays” principle embodied in OPA 90. In addition, this final rule clarifies applicability of the OPA 90 vessel limits of liability to edible oil cargo tank vessels and tank vessels designated as oil spill response vessels. This clarification to the prior regulatory text is needed for consistency with OPA 90. Finally, this rule makes several non-substantive clarifying and editorial revisions to

the regulatory text. This rulemaking promotes the Coast Guard's missions of maritime safety and maritime stewardship.

**DATES:** This final rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or e-mail Benjamin White, Coast Guard; telephone 202-309-1937, e-mail Benjamin.H.White@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

Annual CPI-U	The Annual “Consumer Price Index - All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982-84=100”
BLS	U.S. Department of Labor, Bureau of Labor Statistics
BOEM	The Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
COFR	Certificate of Financial Responsibility
COFR Rule	The Coast Guard regulation, at 33 CFR part 138, subpart A, implementing the requirements under OPA 90 (33 U.S.C. 2716 and 2716a) and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9608 and 9609) for responsible parties to establish and maintain evidence of financial responsibility in the event of an oil spill incident or hazardous substance release.
CPI	Consumer Price Index
CPI-1 Rule	The Coast Guard’s first rulemaking amending 33 CFR part 138, subpart B, to adjust the OPA 90 limits of liability for vessels and deepwater ports for inflation, as required by 33 U.S.C. 2704(d)(4), and to establish the Coast Guard’s procedure for future required inflation adjustments to the OPA 90 limits of liability (Docket No. USCG-2008-0007). See 73 FR 54997 (September 24, 2008) [CPI-1 NPRM]; 74 FR 31357 (July 1, 2009) [CPI-1 Interim Rule]; 75 FR 750 (January 6, 2010) [CPI-1 Final Rule].
CPI-2 NPRM	The NPRM for this rulemaking, published at 79 FR 49206 (August 19, 2014).
CPI-2 Rule	This rulemaking, which is the Coast Guard’s second rulemaking under 33 U.S.C. 2704(d)(4) to amend 33 CFR part 138, subpart B, to adjust the OPA 90 vessel and deepwater port limits of liability for inflation, and the first rulemaking adjusting the onshore facility limit of liability for inflation (Docket No. USCG-2013-1006).
Deepwater port	A facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524)
DHS	U.S. Department of Homeland Security

DRPA	The Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109-241, July 11, 2006, 120 Stat. 516
E.O.	Executive Order
FR	<i>Federal Register</i>
Fund	The Oil Spill Liability Trust Fund created by 26 U.S.C. 9509, and administered by NPFC
LNG	Liquefied natural gas
LOOP	Louisiana Offshore Oil Port
MARAD	U.S. Department of Transportation, Maritime Administration
MODU	Mobile offshore drilling unit
NPFC	U.S. Coast Guard, National Pollution Funds Center
NPRM	Notice of proposed rulemaking
OMB	U.S. Office of Management and Budget
OPA 90	The Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, et seq.)
SBA	U.S. Small Business Administration
§	Section symbol
U.S.	United States
U.S.C.	United States Code

## II. Basis and Purpose

In general, under Title I of the Oil Pollution Act of 1990, as amended (OPA 90),<sup>1</sup> the responsible parties for any vessel (other than a public vessel)<sup>2</sup> or for any facility<sup>3</sup> from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States, are strictly liable, jointly and severally, under 33 U.S.C. 2702 for the removal costs and damages that result from such incident (“OPA 90 removal costs and damages”). Under 33 U.S.C. 2704, however, a responsible party’s OPA 90 liability with

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<sup>1</sup> 33 U.S.C. 2701, *et seq.*

<sup>2</sup> Public vessels are expressly excluded from OPA 90 coverage. See 33 U.S.C. 2701(29) and (37) (definitions of public vessel and vessel) and 33 U.S.C. 2702(c)(2) (public vessel exclusion).

<sup>3</sup> OPA 90 (33 U.S.C. 2701(9)) defines “facility” as “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes”.

respect to any one incident<sup>4</sup> is limited (with certain exceptions set forth in 33 U.S.C. 2704(c)) to a specified dollar amount.

In instances when a limit of liability applies, the Oil Spill Liability Trust Fund (Fund) is available to compensate the OPA 90 removal costs and damages incurred by the responsible party and third-party claimants in excess of the applicable limit of liability.<sup>5</sup> This Fund is managed by the Coast Guard's National Pollution Funds Center (NPFC).

OPA 90 sets forth the statutory limits of liability for vessels and three types of facilities: onshore facilities, deepwater ports licensed under the Deepwater Port Act of 1974 (hereinafter "deepwater ports"), and offshore facilities other than deepwater ports.<sup>6</sup> In addition, to prevent the real value of the OPA 90 statutory limits of liability from depreciating over time as a result of inflation and preserve the "polluter pays" principle embodied in OPA 90, 33 U.S.C. 2704(d)(4) requires that the OPA 90 limits of liability be adjusted by regulation "not less than every 3 years . . . to reflect significant increases in the Consumer Price Index".<sup>7</sup>

The President has delegated this regulatory authority to the Secretary of the

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<sup>4</sup> The term "incident" is defined in 33 U.S.C. 2701(14) as "any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil".

<sup>5</sup> See 33 U.S.C. 2708, 2712(a)(4) and 2713; and 33 CFR part 136. A more comprehensive description of the Fund can be found in the Coast Guard's May 12, 2005, "Report on Implementation of the Oil Pollution Act of 1990", which is available in the docket.

<sup>6</sup> The term "onshore facility" is defined in 33 U.S.C. 2701(24) as "any facility (including but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land". The term "deepwater port" is defined in 33 U.S.C. 2701(6) as "a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524)". The term "offshore facility" is defined in 33 U.S.C. 2701(24) as "any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;" Onshore facilities, deepwater ports and offshore facilities include component pipelines. See definition of "facility" in footnote 3, above.

<sup>7</sup> 33 U.S.C. 2704(d)(4).

department in which the Coast Guard is operating, in respect to the statutory limits of liability for vessels, deepwater ports, and onshore facilities. The Secretary of Homeland Security has further delegated this authority to the Commandant of the Coast Guard.<sup>8</sup>

In this final rule we are making four changes to the Coast Guard regulations at 33 CFR part 138, subpart B. First, we are carrying out the required inflation adjustments to the OPA 90 limits of liability for vessels, deepwater ports and onshore facilities. Second, we are establishing a simplified regulatory procedure to ensure timely future required inflation adjustments to those limits of liability. Third, we are clarifying applicability of the OPA 90 vessel limits of liability to edible oil cargo tank vessels and to tank vessels designated in their certificates of inspection as oil spill response vessels.<sup>9</sup> This clarification to the regulatory text is needed for consistency with OPA 90. Fourth, we are making several non-substantive clarifying and editorial revisions to the regulatory text. These revisions include adding a cross-reference to the Code of Federal Regulations (CFR) section that sets forth the offshore facility limit of liability for damages, as adjusted for inflation by the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM). That limit of liability can be found at 30 CFR 553.702. The regulatory text revisions made by this final rule were discussed in the notice of proposed rulemaking (NPRM), and the Coast Guard is adopting them today without substantive change.

### III. Background and Regulatory History

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<sup>8</sup> The regulatory authority to adjust the offshore facility limit of liability for damages has been delegated to the Secretary of the Interior. See further discussion of the delegations in Part III.C., below, under Background and Regulatory History.

<sup>9</sup> 33 U.S.C. 2704(c)(4).

A. Creation of 33 CFR part 138, subpart B

In 2008, we promulgated 33 CFR part 138, subpart B, setting forth the OPA 90 limits of liability for vessels and deepwater ports. (See, Docket No. USCG–2005–21780.) This was done in anticipation of the Coast Guard periodically adjusting those limits of liability to reflect significant increases in the CPI, as required by 33 U.S.C. 2704(d)(4), and to ensure that the applicable amounts of OPA 90 financial responsibility that must be demonstrated and maintained by vessel and deepwater port responsible parties, as required by 33 U.S.C. 2716 and 33 CFR part 138, subpart A (COFR Rule), would always equal the applicable OPA 90 limits of liability as adjusted over time.

B. Prior regulatory inflation adjustments to the OPA 90 limits of liability for vessels and deepwater ports

We published a notice of proposed rulemaking (NPRM) on September 24, 2008 (73 FR 54997) (CPI-1 NPRM), and an interim rule with request for comments on July 1, 2009 (74 FR 31357) (CPI-1 Interim Rule) adjusting the vessel and deepwater port limits of liability at 33 CFR part 138, subpart B, to reflect significant increases in the CPI.<sup>10</sup> The CPI-1 Interim Rule also established the Coast Guard’s procedures and methodology for adjusting the OPA 90 limits of liability for inflation over time at § 138.240.

We received no adverse public comments on the CPI-1 Interim Rule. We, therefore, published a final rule on January 6, 2010, adopting the CPI-1 Interim Rule amendments to 33 CFR part 138, subpart B, without change (CPI-1 Final Rule, 75 FR

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<sup>10</sup> This included adjustments to the regulatory limit of liability established for the Louisiana Offshore Oil Port (LOOP) under the OPA 90 deepwater port risk-based limit of liability adjustment authority at 33 U.S.C. 2704(d)(2), 60 FR 39849 (August 4, 1995). See the CPI-1 Rule for more background on LOOP. We promulgated the CPI-1 Rule adjustments as an interim, rather than final, rule to clarify the regulatory text in response to a late comment we received on a related 2008 rulemaking amending the COFR Rule. That comment is discussed below in Part IV.E., in response to a comment submitted on this rulemaking.

750).<sup>11</sup>

C. Clarification of the Coast Guard's delegated authority to adjust the onshore facility limit of liability

The CPI-1 Rule was the Coast Guard's first set of inflation adjustments to the OPA 90 limits of liability for vessels and deepwater ports. We, however, deferred adjusting the statutory limit of liability for onshore facilities in 33 U.S.C. 2704(a)(4) at that time. This was because Executive Order (E.O.) 12777, Sec. 4, and its implementing re-delegations vested the President's responsibility to adjust the OPA 90 limits of liability in multiple agencies.

Specifically, the delegations vested the President's limit of liability adjustment authorities in the Commandant of the Coast Guard for vessels, deepwater ports and marine transportation-related onshore facilities, in the Secretary of the Department of Transportation for non-marine transportation-related onshore facilities, in the Administrator of the Environmental Protection Agency for non-transportation-related onshore facilities, and in the Secretary of the Interior for offshore facilities. That division of responsibilities complicated the CPI adjustment rulemaking requirement, particularly in respect to the three sub-categories of onshore facilities. Further interagency coordination was, therefore, needed to avoid inconsistent regulatory treatment.

By deferring the first onshore facility limit of liability inflation adjustment we were able to complete the required first set of inflation increases to the vessel and deepwater port limits of liability by the 2009 statutory deadline established by the

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<sup>11</sup> All *Federal Register* notices, comments and other materials related to the CPI-1 Rule are available in the public docket for that rulemaking (Docket No. USCG-2008-0007).



Delaware River Protection Act of 2006 (DRPA).<sup>12</sup> In addition, as of that date, there had never been an onshore facility incident that exceeded the statutory onshore facility limit of liability, and there were no adverse public comments on our decision to defer the first regulatory inflation adjustment to the onshore facility limit of liability.

On March 15, 2013, the President signed E.O. 13638, restating and simplifying the delegations in E.O. 12777, Sec. 4, and vesting the authority to make CPI adjustments to the onshore facility statutory limit of liability in “the Secretary of the Department in which the Coast Guard is operating”.<sup>13</sup> The restated delegations also require interagency coordination, but otherwise preserve the earlier delegations, including the authority to adjust the limits of liability for vessels and deepwater ports. On July 10, 2013, the Secretary of Homeland Security issued DHS Delegation Number 5110, Revision 01, re-delegating these authorities to the Commandant of the Coast Guard.

#### D. Overview of changes proposed by the NPRM for this rulemaking (CPI-2 NPRM)

On August 19, 2014, we published an NPRM to amend 33 CFR part 138, subpart B (CPI-2 NPRM, at 79 FR 49206). The CPI-2 NPRM proposed four changes to 33 CFR part 138, subpart B. First, we proposed to carry out the second set of inflation adjustments to the vessel and deepwater port limits of liability, and the first inflation adjustment under the Commandant’s newly-delegated authorities to the onshore facility statutory limit of liability. Second, we proposed a simplified regulatory procedure, at

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<sup>12</sup> Title VI of the Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109-241, July 11, 2006, 120 Stat. 516. Section 603 of DRPA added a 2009 statutory deadline for completing the first rulemaking to increase the limits of liability for inflation to 33 U.S.C. 2704(d)(4).

<sup>13</sup> E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227 (also available at 78 FR 17589, March 21, 2013), amending E.O. 12777, Sec. 4, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166.

new § 138.240(a), for the Coast Guard to make future required periodic CPI increases to the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities. Third, we proposed to clarify applicability of the vessel limits of liability to edible oil cargo tank vessels and oil spill response vessels for consistency with statute, and to renumber some of the subparagraphs for clarity. Fourth, we proposed a number of non-substantive clarifying and editorial revisions to the regulatory text. These revisions included: updates to the titles for Part 138, Subpart B and § 138.240, to the list of authorities, and to the scope, applicability and definitions sections (e.g., to reflect the addition of the onshore facility limit of liability); adding cross-references (e.g., including a cross-reference in § 138.230(d) to the OPA 90 offshore facility limit of liability for damages as adjusted for inflation by BOEM and set forth at 30 CFR 553.702); and paragraph restructuring and plain language revisions to improve the rule's readability (e.g., replacing public law citations with U.S. code citations).

We discussed the following two issues in the CPI-2 NPRM, and they are of relevance to changes we are making to the regulatory text in this final rule.

1. *Updated Annual CPI-U*. To keep the limits of liability current, the inflation adjustment methodology established by the CPI-1 Rule at § 138.240 requires that we use the Annual CPI-U that has been most recently published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) as the “current period” value. We, therefore, noted in the CPI-2 NPRM that the limits of liability shown in proposed § 138.230 were estimates, calculated using the then-available 2013 Annual CPI-U value of 232.957 as the “current period” value.<sup>14</sup> We further noted that we would calculate the limit of liability

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<sup>14</sup> See Table 24 of the BLS CPI Detailed Reports, which are made available each month at the following link: <http://www.bls.gov/cpi/tables.htm>.

adjustments at the final rule stage using the most recently-published Annual CPI-U then available, and that the final limits of liability would therefore differ marginally from the proposed values.

2. *Previous period options.* The CPI-2 NPRM notified the public that, after considering any public comments on the proposal, we might re-calculate the inflation adjustments to the deepwater port and onshore facility statutory limit of liability (33 U.S.C. 2704(a)(4)) using the 1990 Annual CPI-U value of 130.7 as the “previous period”. This would be instead of the 2008 Annual CPI-U value of 215.3 that we used to calculate the proposed deepwater port limit of liability (shown in § 138.230(b)(1) of the CPI-2 NPRM), and the 2006 Annual CPI-U “previous period” value of 201.6 that we used to calculate the proposed onshore facility limit of liability (shown in § 138.230(c) of the CPI-2 NPRM).

We discuss public comments received on these topics and how we have resolved them in Part IV, of this preamble, below.

#### IV. Discussion of Comments and Changes

##### A. Limit of liability adjustments.

We received nine written submissions to the docket. Two submissions were from citizen advisory groups organized under OPA 90, Sec. 5002. Four submissions (including one set of comments submitted on behalf of two commenters) were from environmental advocacy organizations. One comment document was from a drilling contractor association, and two submissions were from anonymous individuals. We

received no requests for public meetings, and held no public meetings for this rulemaking.

*1. General public support for the rulemaking.* Six commenters expressed general support for the proposal. In addition, one commenter expressed support for prioritizing regulations that provide environmental change. No commenter opposed the proposal. The Coast Guard appreciates this support.

*2. Issues raised by the public that are outside the scope of this rulemaking.* Two commenters stated that the OPA 90 statutory limits of liability are inadequate and should be significantly increased. Four commenters expressed the view that OPA 90 liability should not be capped. Several of these commenters stated that removing the liability limits would encourage industry best practices and be consistent with Congressional intent that polluters pay for the injuries they cause. These comments are outside the scope of this rulemaking because, as several of the commenters recognized, striking or significantly increasing the statutory limits of liability would require legislative change.

One commenter expressed the view that penalties for oil spills should not be limited. (This comment concerns civil or criminal penalty liability for oil spills, and is therefore in addition to the comments discussed above in the previous paragraph about the adequacy or need for OPA 90 limits of liability for removal costs and damages.) Another commenter stated that independent third parties should audit clean-ups by responsible parties. Both of these comments also are outside the scope of this rulemaking. This rulemaking only concerns the inflation adjustments to the OPA 90 limits of liability for removal costs and damages that are required under 33 U.S.C.

2704(d)(4). It does not concern penalty liability or the procedures for carrying-out removal actions.

3. *Updated Annual CPI-U.* We received no comments opposing use of the Annual CPI-U that has been most recently published by the BLS, as required in § 138.240.

4. *Public comments concerning use of a 1990 “previous period”.* No commenter opposed, and five commenters expressed support for, using the 1990 Annual CPI-U as the “previous period” value to adjust the statutory onshore facility and deepwater port limit of liability. Several of these commenters stated that using a 1990 “previous period” would capture the full amount of inflation since OPA 90 was enacted, thereby restoring the onshore facility and deepwater port statutory limit of liability to the amount intended by Congress. One of the commenters stated that using the 1990 “previous period” is appropriate because of the increasing risks to U.S. waters of new, more intensive methods of oil production and transportation, including Bakken crude and tar sands. The commenter expressed the view that the approach would help achieve Congress’s intent of ensuring the “polluter pays,” and would encourage onshore facility and deepwater port operators to conduct their operations in the safest manner possible.

5. *Final adjusted limits of liability.*

As we noted above in Part III.D.1., the inflation adjustment methodology established by the CPI-1 Rule at § 138.240 requires that we use the Annual CPI-U that has been most recently published by the BLS as the “current period” value. This requirement is to keep the limits of liability current. On January 16, 2015, the BLS published the 2014 Annual CPI-U value of 236.736. This is the most recently published

Annual CPI-U. We have, therefore, used the 2014 Annual CPI-U as the “current period” value to calculate the new vessel, deepwater port and offshore facility limits of liability established by this final rule.

We also agree with the public comments summarized above, in subpart A.4. of this part, that it is appropriate to use the 1990 Annual CPI-U as the “previous period” value for adjusting the onshore facility and deepwater port statutory limit of liability in 33 U.S.C. 2704(a)(4). This approach captures the full amount of inflation since that limit of liability was established by OPA 90 and is, therefore, consistent with congressional intent. It is also consistent with the approach recently taken by BOEM to adjust the offshore facility limit of liability. (See 79 FR 73832, December 12, 2014.) We have, therefore, recalculated the adjustments to the onshore facility and deepwater port statutory limit of liability using the 1990 Annual CPI-U value of 130.7 as the “previous period”.<sup>15</sup>

Applying the formula set forth in § 138.240(b) for calculating the cumulative percent change in the Annual CPI-U, we have determined that the percent change in the Annual CPI-U exceeds the significance threshold specified in § 138.240(c). We have,

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<sup>15</sup> We are not changing the approach we used in the CPI-1 Rule to adjust the vessel limits of liability for inflation, where we used the 2006 Annual CPI-U value as the “previous period.” We continue to view that approach as consistent with congressional intent, because in 2006 Congress passed DRPA revising the vessel limits of liability. Importantly, however, Congress did not revise the facility limits of liability in 2006 and has not done so since. Thus, although we used the 2006 CPI-U value in making inflation adjustments to the deepwater port limits of liability in the CPI-1 Rule, and we stated that we would also use that same approach in adjusting the onshore facility limits of liability at some future date, we have now decided (with the benefit of public comments on the issue and for the other reasons discussed above and in the CPI-2 NPRM) to use a different approach in adjusting the limits for deepwater ports and onshore facilities. As explained, we are making inflation adjustments for these limits of liability using the 1990 Annual CPI-U value as the “previous period,” because Congress established these limits in 1990 and has not revised them since that time. In addition to being more consistent with congressional intent and the “polluter pays” principle than our prior approach reflected in the CPI-1 Rule, our revised approach also may encourage onshore facility and deepwater port operators to conduct their operations in the safest manner possible, as a commenter suggested.

therefore, calculated the limit of liability adjustments using the formula set forth in § 138.240(d).

Table 1 shows the vessel, deepwater port and onshore facility limits of liability before their adjustment by this final rule (Previous Limits of Liability), the percent change in the Annual CPI-U, and the final inflation-adjusted limits of liability established by today's final rule at § 138.230 (New Limits of Liability). These New Limits of Liability will take effect on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Table 1. CPI-Adjusted Limits of Liability (§ 138.230)

Source Category	Previous Limit of Liability	Percent Change in the Annual CPI-U	New Limit of Liability
(a) Vessels			
(1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are -			
(i) For a single-hull tank vessel greater than 3,000 gross tons, <sup>16</sup>	the greater of \$3,200 per gross ton or \$23,496,000	10%	The greater of \$3,500 per gross ton or \$25,845,600
(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel,	the greater of \$2,000 per gross ton or \$17,088,000	10%	The greater of \$2,200 per gross ton or \$18,796,800
(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons,	the greater of \$3,200 per gross ton or \$6,408,000	10%	The greater of \$3,500 per gross ton or \$7,048,800

<sup>16</sup> As of January 1, 2015, tank vessels not equipped with a double hull can no longer operate on waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), carrying oil in bulk as cargo or cargo residue; and there are no waivers or extensions of the deadline. See Coast Guard message DTG 221736ZDEC14. OPA 90, however, continues to specify limits of liability for single-hull tank vessels. The Coast Guard will, therefore, continue to adjust those limits of liability for inflation.

(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel,	the greater of \$2,000 per gross ton or \$4,272,000	10%	The greater of \$2,200 per gross ton or \$4,699,200
(2) The OPA 90 limits of liability for any vessel other than a vessel listed in subparagraph (a)(1) of § 138.230, including for any edible oil tank vessel and any oil spill response, vessel, are -	the greater of \$1,000 per gross ton or \$854,400	10%	The greater of \$1,100 per gross ton or \$939,800
(b) Deepwater ports.			
(1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in subparagraph (b)(2) of § 138.230, is -	\$373,800,000	81.1%	\$633,850,000
(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are -			
(i) For the Louisiana Offshore Oil Port (LOOP),	\$87,606,000	10%	\$96,366,600
(ii) [Reserved].	N/A	N/A	N/A
(c) Onshore facilities			
The OPA 90 limit of liability for onshore	\$350,000,000	81.1%	\$633,850,000



facilities, including, but not limited to, any motor vehicle, rolling stock or onshore pipeline, is			
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B. Simplified regulatory procedure for future inflation adjustments to the limits.

Four commenters supported adoption of the simplified regulatory procedure proposed in new § 138.240(a) for making future CPI adjustments to the limits of liability. The Coast Guard appreciates and agrees with these comments. No commenter opposed this proposal. We are, therefore, adopting the simplified regulatory procedure as proposed. This procedure, which is based on a Federal Energy Regulatory Commission fee-adjustment procedure in 18 CFR 381.104(a) and (d), will help ensure regular, timely inflation adjustments to the limits of liability, and is an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments.

C. Inflation adjustment methodology.

The CPI-2 NPRM did not propose any substantive changes to the § 138.240 limit of liability adjustment methodology promulgated by the CPI-1 Rule (§ 138.240(b)-(d), and previously designated as paragraphs (a)-(c)). Two commenters, however, expressed support for the inflation significance threshold in § 138.240(c) and the adjustment methodology established by the CPI-1 Rule generally, including the annual reviews the Coast Guard will conduct if the significance threshold is not met after 3 years. We appreciate receiving that input and are today adopting those provisions of § 138.240 with no substantive change.

The only changes we have made to the regulatory text of § 138.240, as adopted by the CPI-1 Rule, are: (1) changing the title, (2) adding the simplified regulatory procedure

that was proposed as new paragraph § 138.240(a) in the CPI-2 NPRM; (3) redesignating the paragraph lettering in the provisions that follow to accommodate insertion of the simplified regulatory procedure and for clarity; and (4) an editorial amendment to § 138.240(b)(2) to more clearly cross-reference § 138.240(b)(1).

D. Clarifying applicability of the “other vessel” limits of liability to edible oil tank vessels and oil spill response vessels.

The CPI-2 NPRM proposed to clarify the regulatory text for consistency with OPA 90 as amended by the 1995 Edible Oil Regulatory Reform Act<sup>17</sup> and the Coast Guard Authorization Act of 1998.<sup>18</sup> Those amendments to OPA 90 exclude edible oil tank vessels and oil spill response vessels from the definition of “tank vessel”. As a result, both vessel types are classified as a matter of law to the “any other vessel” category for purposes of determining the applicable OPA 90 limits of liability and evidence of financial responsibility requirements.

One commenter expressed support for our proposal to clarify applicability of the vessel limits of liability to these two vessel categories. We appreciate receiving this comment and believe that the proposed clarification will reduce regulatory uncertainty. No commenter opposed this proposal. We are therefore adopting the proposed regulatory text clarification, with minor non-substantive editorial revisions.

E. Applicability of the tank vessel limits of liability, including for MODUs.

One commenter recommended that the Coast Guard amend the regulatory text to further clarify that a mobile offshore drilling unit (MODU) that is not "constructed or

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<sup>17</sup> Pub. L. 104–55, Nov. 20, 1995, 109 Stat. 546, Section 2(d) amending OPA 90 33 U.S.C. 2704(a)(1) and 33 U.S.C. 2716(a).

<sup>18</sup> Pub. L. 105-383, title IV, section 406, Nov. 13, 1998, 112 Stat. 3429.

adapted to carry, or carries, oil in bulk as cargo or cargo residue" is subject to the lower tank vessel limits of liability in § 138.230(a)(1)(ii) and (iv). The commenter's understanding of the rule is correct. We, however, already clarified this issue in the CPI-1 Rule. Resolving this issue was, indeed, the only reason we published the CPI-1 Rule initially as an interim rule, rather than a final rule, in July, 2009.

Specifically, in response to late comments we received on our separate but related 2008 COFR Rule amendments (Docket No. USCG-2005-21780), our CPI-1 Interim Rule proposed a new definition in § 138.220 for the term "single-hull". The revision limited the term "single-hull" to a tank vessel that is "constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue." In addition, we added limiting language in § 138.230(a). We received no adverse public comments on those proposed CPI-1 Interim Rule revisions and, therefore, adopted the clarifications in the CPI-1 Final Rule without change.

Those regulatory text revisions made clear that any tank vessel that does not meet the regulatory definition of "single hull" – including but not limited to a MODU that is neither constructed nor adapted to carry, and that does not carry, oil in bulk as cargo or cargo residue – are excluded from the single-hull tank vessel limit of liability categories in § 138.230(a)(1)(i) and (iii). All such vessels are instead subject to the "other than a single-hull tank vessel" limit of liability categories in § 138.230(a)(1)(ii) and (iv).

Therefore, since the same standard applies to all tank vessels (i.e., a vessel either is, or is not, a vessel "constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue"), we do not see a need to single-out specific categories of tank vessels, such as MODUs, in the regulatory text. Singling out MODUs could, moreover, create

unintended ambiguity respecting applicability of the general standard to other types of tank vessels.

We note that this issue is very different from the clarifications we are adopting today in respect to the treatment of edible oil tank vessels and oil spill response vessels. We are adopting those clarifications because those two vessel categories are, as a matter of law, not “tank vessels” under OPA 90.<sup>19</sup> They are, therefore, subject to the “other vessel” limits of liability in § 138.230(a)(2), rather than any of the “tank vessel” limits of liability in § 138.230(a)(1). A MODU, by comparison, is treated in OPA 90 as a “tank vessel”.<sup>20</sup>

#### F. Other revisions to clarify the regulatory text.

The CPI-2 NPRM proposed a number of non-substantive clarifying and editorial changes to the regulatory text to improve its readability. These included: updates to titles, and the list of authorities and definitions; adding cross-references, including a cross-reference in § 138.230(d) to the OPA 90 offshore facility limit of liability for damages as adjusted for inflation by BOEM; paragraph restructuring and renumbering to accommodate new regulatory text; and plain language revisions. We received no comments opposing these changes. This final rule, therefore, adopts the proposed changes and we have further clarified and edited the text for readability. The additional revisions include: further updates to and simplification of the list of authorities citations; wording to clarify applicability of the limits of liability to motor vehicles, rolling stock and pipelines for consistency with OPA 90; simplification of the paragraph structure and introductory clauses in § 138.230 for readability and to eliminate subparagraph titles; and

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<sup>19</sup> See 33 U.S.C. 2704(c)(4)(A) and (B).

<sup>20</sup> 33 U.S.C. 2704(b)(1).

an editorial amendment to § 138.240(b)(2) to more clearly cross-reference § 138.240(b)(1).

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive Orders.

### A. Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. A final Regulatory Assessment is available in the docket, and a summary follows.

#### *1. Regulatory Costs*

We have analyzed the potential costs of this rulemaking, and expect it to:

Regulatory Cost 1: Increase the cost of liability; and

Regulatory Cost 2: Increase the cost of establishing and maintaining evidence of financial responsibility.

##### *a. Discussion of Regulatory Cost 1*

This rule could increase the dollar amount of OPA 90 removal costs and damages the responsible party of a vessel (other than a public vessel), deepwater port, or onshore facility must pay in the event of an OPA 90 incident. This regulatory cost, however, would only be incurred by a responsible party if an incident resulted in OPA 90 removal costs and damages that exceeded the applicable vessel, deepwater port, or onshore facility Previous Limit of Liability. In any such case, assuming as we do in this analysis that the responsible party is entitled to a limit of liability (i.e., that none of the exceptions in 33 U.S.C. 2704(c) apply), the difference between the Previous Limit of Liability amount and the New Limit of Liability amount is the maximum increased cost to the responsible party. The responsible party would have no legal obligation to incur incident costs above this value.

*i. Affected Population – Vessels*

This rule could affect the responsible parties of any vessel (other than a public vessel),<sup>21</sup> involved in an OPA 90 incident.<sup>22</sup> The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the vessel's Previous Limit of Liability.

Coast Guard data as of May 2014 indicate that – since OPA 90 was enacted in August of 1990 – 67 vessel incidents (i.e., an average of approximately three vessel incidents per year) resulted in OPA 90 removal costs and damages in excess of the

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<sup>21</sup> According to Coast Guard's MISLE database, there are over 200,000 vessels of various types in the population of vessels using U.S. waters that are not public vessels. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

<sup>22</sup> See the OPA 90 definition of "incident" in footnote 4, above.

applicable Previous Limits of Liability.<sup>23</sup> For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents with costs exceeding the Previous Limits of Liability would occur each year throughout the 10-year analysis period (2016-2025).

*ii. Affected Population – Deepwater Ports*

This rule could affect the responsible parties of any deepwater port (including its component pipelines) involved in an OPA 90 incident. The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the deepwater port's Previous Limit of Liability.

Currently there are only two licensed deepwater ports in operation – LOOP and Northeast Gateway. Northeast Gateway is a liquefied natural gas (LNG) port and, as currently designed and operated, uses less than 100 gallons of oil. Therefore, it is highly unlikely that Northeast Gateway would ever be the source of an OPA 90 incident with removal costs and damages in excess of the Previous Limit of Liability. We therefore do not include Northeast Gateway in this analysis.<sup>24</sup>

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<sup>23</sup> See United States Coast Guard Report to Congress, "Oil Pollution Act Liability Limits in 2014", Department of Homeland Security, October 2, 2014, which is available in the docket at <http://www.regulations.gov>, Docket No. USCG-2013-1006, RIN 1625-AC14.

<sup>24</sup> Two other similarly-designed LNG deepwater ports, Gulf Gateway Energy Bridge and Port Dolphin, were mentioned in the regulatory analysis for the CPI-1 Rule. But, on June 28, 2013, the Maritime Administrator (MARAD) cleared decommissioning of the Gulf Gateway Energy Bridge, approving termination of its license; and, on August 28, 2015, Port Dolphin Energy LLC Deepwater Port surrendered its license. In addition, MARAD licensed the Neptune LNG, LLC, deepwater port on March 23, 2007. But, on July 22, 2013, MARAD approved a request by Suez Energy North America, Inc., to suspend that deepwater port's operations for five years and to amend its license. Neptune, moreover, has substantially the same design as Northeast Gateway and, therefore, also is not likely to ever have an oil pollution incident with removal costs and damages in excess of the Previous Limit of Liability. These LNG deepwater ports, therefore, also are not included in this analysis. MARAD has received applications for two other LNG deepwater ports, and we expect others will be proposed over the next ten years. If those ports are designed to use substantially the same technology as Northeast Gateway, they also would not be likely to ever have oil pollution incidents with removal costs and damages in excess of the Previous Limit of Liability.

To date, LOOP (the only oil deepwater port in operation) has not had an OPA 90 incident that resulted in removal costs and damages in excess of LOOP's Previous Limit of Liability of \$87,606,000. However, the potential for such a spill exists. Therefore, for the purposes of this analysis, we show the cost of one OPA 90 incident occurring at LOOP over the 10-year analysis period (2016-2025), with OPA 90 removal costs and damages in excess of the Previous Limit of Liability for LOOP.

*iii. Affected Population – Onshore Facilities*

This rule could affect the responsible parties for any onshore facility (including onshore pipelines) involved in an OPA 90 incident. The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the onshore facility Previous Limit of Liability.

Because of the large number and diversity of onshore facilities, it is not possible to predict which specific types or sizes of onshore facilities might be affected by this rule. Coast Guard data, however, indicate that from the enactment of OPA 90 in August, 1990, through May, 2015, only one onshore facility incident – the 2010 Enbridge Pipeline spill in Michigan – has likely resulted in OPA 90 removal costs and damages exceeding the onshore facility Previous Limit of Liability of \$350,000,000.<sup>25</sup>

The Enbridge Pipeline incident indicates that the Previous Limit of Liability for an onshore facility, although high, can still be exceeded by a low likelihood, but high consequence oil spill. Therefore, for the purposes of this analysis, we assume one onshore facility incident would occur over the 10-year analysis time period (2016-2025)

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<sup>25</sup> As of June 2015, Enbridge Energy Partners reported costs of more than \$1.2 billion resulting from the pipeline spill.  
[Http://www.mlive.com/news/kalamazoo/index.ssf/2015/06/enbridge\\_to\\_pay\\_additional\\_4\\_m.html](http://www.mlive.com/news/kalamazoo/index.ssf/2015/06/enbridge_to_pay_additional_4_m.html)



with OPA 90 removal costs and damages in excess of the onshore facility Previous Limit of Liability.

iv. *Cost Summary Regulatory Cost 1*

(a) *Vessels*

We estimate the greatest cost to a vessel responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the average annual cost from the historical incidents analyzed would remain constant throughout the analysis period (2016-2025). The average annual increased cost of liability was estimated first by calculating the difference between the Previous Limit of Liability and the New Limit of Liability for each of the 67 historical vessel incidents with removal costs and damages in excess of the applicable OPA 90 limit of liability. These values were then totaled<sup>26</sup> and divided by the number of years of data to estimate the average annual increased cost.

$$\$60,376,000 \div 24 \text{ years} = \$2,515,700 \text{ per year (non-discounted dollars)}$$

(b) *Deepwater Ports*

We estimate the greatest cost to a deepwater port responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the New Limit of Liability. As mentioned above, LOOP has never had an incident with OPA 90 removal costs and damages in excess of its Previous Limit of Liability. Therefore, given the lack of any deepwater port historical data, we have assumed that a LOOP incident with costs above its Previous Limit of Liability of \$87,606,000 would be analogous to a vessel incident with costs in excess of \$87,606,000 with respect to the duration of responsible party payments.

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<sup>26</sup> See Figure 3 in the Regulatory Assessment.

Specifically, relying on historical duration of payment data for vessel incidents, we assume that the LOOP responsible parties would make OPA 90 removal cost and damage payments for the one hypothetical incident over the course of 10 years after the incident date.<sup>27</sup> In addition, for the purposes of this analysis, we assume that the payments would be spread out in equal annual amounts over the 10-year analysis period (2016-2025).<sup>28</sup> Applying these assumptions, the average annual cost resulting from the one hypothetical LOOP incident would be \$876,000 (non-discounted dollars).

$$\$96,366,600 - \$87,606,000 = \$8,760,600$$

$$\$8,760,600 \div 10 \text{ years} = \$876,000 \text{ per year (non-discounted dollars)}$$

*(c) Onshore Facilities*

We estimate the greatest cost to an onshore facility responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the New Limit of Liability. Based on NPFC's experience with onshore facility incidents, we assume that an onshore facility responsible party would be making OPA 90 removal cost and damage payments for the one estimated incident over the course of 10 years after the incident date.<sup>29</sup> We further assume that the

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<sup>27</sup>The per-incident duration of payments was determined by comparing the incident date and the completion date for each vessel incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2014 dollars) above LOOP's "Previous Limit of Liability" of \$87,606,000. There were six incidents fitting this criteria. Three are ongoing incidents, and three are completed. The average duration of payments for the three completed incidents was approximately 10 years.

<sup>28</sup> Based on Coast Guard subject matter expert experience, we have assumed that the payments would be spread out equally over the 10-year analysis period. This realistically models the long duration of OPA 90 removal actions (particularly in the case of an incident resulting in OPA 90 removal costs and damages exceeding the limit of liability), the time lag in billings and payments and, if applicable, associated claim submissions, claim payments and litigation.

<sup>29</sup> The per-incident duration of payments was determined by comparing the incident date and the completion date of each onshore facility incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2014 dollars) greater than or equal to \$5 million. There were 21 incidents

payments would be spread out in equal annual amounts over the 10-year analysis period (2016-2025).<sup>30</sup> Applying these assumptions, the average annual cost resulting from the one estimated onshore facility OPA 90 incident over 10 years is estimated to be \$28,385,000 (non-discounted dollars).

$$\$633,850,000 - \$350,000,000 = \$283,850,000$$

$$\$283,850,000 \div 10 \text{ years} = \$28,385,000 \text{ per year (non-discounted dollars).}$$

v. *Present Value of Regulatory Cost 1*

The 10-year present value of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be \$271.1 million. The 10-year present value of Regulatory Cost 1, at a 7 percent discount rate, is estimated to be \$223.2 million. The annualized discounted cost of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be \$31.8 million. The annualized discounted cost of Regulatory Cost 1, at a 7 percent discount rate is estimated to be \$31.8 million.

b. *Discussion of Regulatory Cost 2*

OPA 90 requires that the responsible parties for certain types and sizes of vessels and for deepwater ports establish and maintain evidence of financial responsibility to ensure that they have the ability to pay for OPA 90 removal costs and damages, up to the applicable limits of liability, in the event of an OPA 90 incident.<sup>31</sup> Therefore, because the regulatory changes contemplated by this rule would increase those limits of liability,

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fitting these criteria: 9 are ongoing incidents and 12 are completed. The average duration for the 12 completed incidents was approximately 10 years.

<sup>30</sup> See footnote 28, above.

<sup>31</sup> See 33 U.S.C. 2716(a) and (c)(2). OPA 90 also imposes financial responsibility requirements on offshore facilities. Those requirements are, however, regulated by the BOEM. (See 30 CFR part 553.) OPA 90 does not impose evidence of financial responsibility requirements on onshore facilities.

vessel and deepwater port responsible parties could incur additional costs establishing and maintaining evidence of financial responsibility as a result of this rulemaking.

As discussed above and further below, there will be no Regulatory Cost 2 impacts on deepwater ports because LOOP is the only deepwater port in operation required to provide evidence of financial responsibility, and LOOP is not expected to have any increased evidence of financial responsibility costs as a result of this rule. Therefore, only vessel responsible parties are expected to see Regulatory Cost 2 impacts.

*i. Affected Population – Vessels*

Vessel responsible parties who are required to establish and maintain evidence of financial responsibility, may do so using any of the following methods: Insurance, Self-Insurance, Financial Guaranty, Surety Bond, or any other method approved by the Director, NPFC.<sup>32</sup> As of April 1, 2015, the NPFC's Certificate of Financial Responsibility (COFR) database contained 19,750 vessels using Insurance, 4,199 vessels using Self-Insurance, 1,368 vessels using Financial Guaranties, and 2 vessels using Surety Bonds. This rule could affect the cost to vessel responsible parties of establishing and maintaining evidence of financial responsibility using any of these methods.<sup>33</sup> The OPA 90 evidence of financial responsibility applicable amounts required under 33 CFR 138.80(f) are equal to the OPA 90 limits of liability in 33 CFR 138.230(a) and automatically update when the limits of liability are increased for inflation. Because of

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<sup>32</sup> See 33 CFR 138.80(b). The term "Insurance" is capitalized here to refer to the insurance used to comply with the requirement under OPA 90 (33 U.S.C. 2716) for responsible parties to establish and maintain evidence of financial responsibility. This use of the term "Insurance" is distinct from other types of insurance a responsible party might have (e.g., vessel hull insurance, marine pollution insurance, etc.).

<sup>33</sup> There currently are no vessel responsible parties using other methods of demonstrating financial responsibility approved by the Director, NPFC, and, based on historical experience, NPFC does not expect any responsible parties will use any other method during the analysis period (2016-2025)

this relationship, the amount of financial responsibility required is also based on the type of vessel and, in the case of tank vessels, on their hull type.

*ii. Affected Population – Deepwater Ports*

As discussed above in respect to Cost 1, currently there are two licensed deepwater ports in operation – LOOP and Northeast Gateway. The Coast Guard, however, has not yet proposed regulations implementing OPA 90 financial responsibility requirements for deepwater ports. Therefore, although LOOP is providing evidence of financial responsibility under a procedure that was grandfathered by OPA 90, 33 U.S.C. 2716(h), there are no OPA 90 evidence of financial responsibility regulatory requirements that currently apply to deepwater ports generally, including Northeast Gateway. We have, therefore, analyzed Cost 2 impacts only in respect to LOOP.

*iii. Affected Population – Onshore Facilities*

None. There is no requirement in OPA 90 for onshore facility responsible parties to establish and maintain evidence of financial responsibility.

*iv. Cost Summary Regulatory Cost 2*

*(a) Vessels*

*Increases to Vessel Insurance Premiums.* The calculation of Insurance premium rates are dependent on many constantly changing factors, including: market forces, interest rates and investment opportunities for the premium income, the terms and conditions of the policy, and underwriting criteria such as vessel age, loss history, construction, classification details, and management history. As calculated above, the change in the limits of liability for vessels is 10 percent (rounded to one decimal place as required by the rule). At the NPRM stage of this rulemaking, data was requested from 9

of a possible 14 Insurance companies. Four responded with their current premium rates and their best estimates of the increase in premium rates resulting from the proposed regulatory change. These four Insurance companies represented approximately 93 percent of vessels that use the Insurance method of financial responsibility. The data provided estimated that a 6 percent increase in premiums would occur for an increase in the limits of liability in the range of 5 percent to 10 percent. Therefore, consistent with the NPRM's Regulatory Analysis, it is assumed that a 10 percent increase in the limits of liability would cause on average a 6 percent increase in Insurance premiums charged across all vessel types.<sup>34</sup>

We estimated costs by multiplying the number of vessels by vessel category for each year of the analysis (2016-2025) by the Expected Average Increase in Premium for that particular vessel type. The annual cost associated with increased Insurance premiums is estimated to be \$6.5 million (non-discounted dollars).

*Migration of responsible parties currently using the Self-Insurance and Financial Guaranty Methods of Financial Responsibility to the Insurance market.* Based on the financial documentation received from responsible parties using the Self-Insurance or Financial Guaranty methods, the Coast Guard estimates that the responsible parties for 2 percent of the vessels that have COFRs based on those methods might need to migrate to the Insurance method of financial responsibility.

The cost estimates for responsible parties migrating to the Insurance method of financial responsibility were calculated by first multiplying the number of vessels using

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<sup>34</sup> After we published the NPRM, several Insurance companies provided updated data indicating that, due to changing market conditions, an increase in limits of liability for vessels of 15 % or less should not cause them to raise their premiums. The actual impact of Regulatory Cost 2 could therefore be less than the impact we are estimating here. This is because we rely in this analysis on the data used for the NPRM regulatory analysis.

Self-Insurance or Financial Guaranty by vessel category for each year of the analysis period (2016-2025) by the presumed percent of impacted vessels (2 percent) and then multiplying the product by the estimated Expected Average Annual Premium for that particular vessel type.

The annual cost associated with vessel responsible parties migrating to Insurance is estimated to be \$532,100 (non-discounted dollars).

*Increased Cost to Responsible Parties using the Surety Bond Method.* Currently only one responsible party uses the Surety Bond method to establish evidence of financial responsible for two tank vessels. For that responsible party, additional Surety Bond coverage will be required to establish or maintain evidence of financial responsibility up to the New Limits of Liability. The responsible party would also have the option of changing the method of financial guaranty to the Insurance method, or (if the responsible party meets the financial requirements to do so) to the Self-Insurance or Financial Guaranty method.

We do not have data on the fees charged by Surety Bond providers. But, if the cost of obtaining Surety Bond coverage were higher than the cost of Insurance, we would expect the one responsible party currently relying on the Surety Bond method to use the Insurance method instead. Therefore, we assume that the cost to the responsible party of using the surety method does not exceed the Insurance premium associated with the Insurance method. In the case of the one responsible party that is using the Surety Bond method for two tank vessels under 3,000 gross tons, this would be cost of \$3,700 per vessel per year (i.e., the cost of Insurance per vessel) or a total annual cost of \$7,400.

(b) Deepwater Ports

The 10 percent increase in the LOOP limit of liability resulting from this rulemaking is not expected to increase the cost to the LOOP responsible parties associated with establishing and maintaining LOOP's evidence of financial responsibility. This is because the LOOP responsible parties are already providing evidence of financial responsibility to the Coast Guard at a level that exceeds both LOOP's Previous Limit of Liability and its New Limit of Liability of \$96,366,600. The Coast Guard has historically accepted the following documentation as evidence of financial responsibility for LOOP:

- An insurance policy issued by Oil Insurance Limited (OIL) of Bermuda with coverage up to \$150 million per OPA 90 incident and a \$225 million annual aggregate,
- Documentation that LOOP operates with a net worth of at least \$50 million, and
- Documentation that the total value of the OIL policy aggregate plus LOOP's working capital does not fall below \$100 million.

The Coast Guard, therefore, does not expect this action to change the terms of the OIL policy, to result in an increased premium for the OIL policy, or to require LOOP to have higher minimum net worth or working capital requirements.

#### (c) Onshore Facilities

None. There is no requirement in OPA 90 for onshore facility responsible parties to establish and maintain evidence of financial responsibility.

#### v. *Present Value of Regulatory cost 2*

The 10-year present value, at a 3 percent discount rate, is estimated to be \$60.0 million. The 10-year present value, at a 7 percent discount rate, is estimated to be \$49.3



million. The annualized discounted cost, at a 3 percent discount rate, is estimated to be \$7.0 million. The annualized discounted cost, at a 7 percent discount rate, is estimated to be \$7.0 million.

c. Present Value of Total Cost

The 10-year present value, at a 3 percent discount rate, is estimated to be \$331.0 million. The 10-year present value, at a 7 percent discount rate, is estimated to be \$272.5 million. The annualized discounted cost, at a 3 percent discount rate is estimated to be \$38.8 million. The annualized discounted cost, at a 7 percent discount rate is estimated to be \$38.8 million.

2. Regulatory Benefits

In our Regulatory Analysis, we have analyzed the regulatory benefits of this final rule qualitatively.

a. Regulatory Benefit 1: *Ensure that the OPA 90 limits of liability keep pace with inflation.*

OPA 90 (33 U.S.C. 2704(d)(4)) mandates that limits of liability be updated periodically to reflect significant increases in the CPI to account for inflation. The intent of this requirement is to ensure that the real values of the limits of liability do not decline over time. Absent CPI adjustments, a responsible party ultimately gains an advantage that is not contemplated by OPA 90 because the responsible party pays a reduced percentage of the total incident costs the responsible party would be required to pay with inflation incorporated into the determination of the applicable limit of liability. This final rule requires responsible parties to internalize inflation, thereby benefitting the public.

b. Regulatory Benefit 2: *Ensure that the responsible party is held accountable.*

By increasing the limits of liability to account for inflation, this final rule ensures that the appropriate amount of removal costs and damages are borne by the responsible party and that liability risk is not shifted away from the responsible party to the Fund. This helps preserve the "polluter pays" principle as intended by Congress and preserves the Fund for its other authorized uses. Failing to adjust the limits of liability for inflation, by comparison, shifts those costs to the public and the Fund.

*c. Regulatory Benefit 3: Reduce and deter substandard shipping and oil handling practices.*

Increasing the limits of liability serves to reduce the number of substandard ships in U.S. waters and ports because Insurers, Surety Bond providers and Financial Guarantors are less likely to provide coverage for substandard vessels at the new levels of OPA 90 liability. Maintaining the limits of liability also helps preserve the deterrent effect of the OPA 90 liability provisions for Self Insurers.

With respect to oil handling practices, the higher the responsible parties' limits of liability are, the greater the incentive for them to operate in the safest and most risk-averse manner possible. Conversely, the lower the limits of liability, the lower the incentive is for responsible parties to spend money on capital improvements and operation and maintenance systems that will protect against oil spills.

*d. Regulatory Benefit 4: Provide statutory consistency, regulatory certainty and administrative efficiency using the streamlined approach.*

Under the simplified regulatory procedure established by this final rule, the Director, NPFC, will publish the inflation-adjusted limits of liability in the Federal Register as final rule amendments to 33 CFR 138.230. The Director will also use this

simplified regulatory procedure to update 33 CFR 138.230 to reflect statutory changes to the OPA 90 limits of liability. This will ensure that the limits of liability set forth in 33 CFR 138, Subpart B, remain consistent with the statutory limits of liability if they are amended. This simplified regulatory procedure will provide regulatory certainty by ensuring regular, timely inflation adjustments to the limits of liability as required by statute. The approach is also an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments. The public comments on the NPRM supported this simplified rulemaking procedure, and no commenter opposed it.

*e. Regulatory Benefit 5: Provide regulatory clarity to responsible parties for edible oil and response tank vessels.*

As discussed above, 33 U.S.C. 2704(c)(4) excludes edible oil tank vessels (i.e., tank vessels on which the only oil carried as cargo is an animal fat or vegetable oil) and oil spill response vessels from the OPA 90 tank vessel limits of liability in 33 U.S.C. 2704(a)(1). The effect of this exclusion is that edible oil tank vessels and oil spill response vessels are classified, as a matter of law, to the “any other vessel” limit of liability category in 33 U.S.C. 2704(a)(2) of OPA 90. In addition, edible oil tank vessels and oil spill response vessels are subject to the lower OPA 90 evidence of financial responsibility requirements applicable to the “any other vessel” category.

The special treatment accorded by OPA 90 to edible oil tank vessels and oil spill response vessels was not reflected in the prior regulatory text of 33 CFR part 138. The Coast Guard’s clarification to the regulatory text by this final rule will, therefore, promote consistency with OPA 90 and be helpful to industry and the public by reducing regulatory uncertainty.

## B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. A Final Regulatory Flexibility Analysis discussing the impact of this rule on small entities is available in the docket, and a summary follows.

We have analyzed the potential impacts of this final rule on small entities, and expect it to:<sup>35</sup>

Regulatory Cost 1. Increase the cost of liability, and

Regulatory Cost 2. Increase the cost of establishing and maintaining evidence of financial responsibility.

### 1. Regulatory Cost 1: Increase the Cost of Liability

As explained above in Part V.A of this preamble and in the Regulatory Analysis for this rule, Regulatory Cost 1 will only occur if there is an OPA 90 incident that has OPA 90 removal costs and damages in excess of the existing limits of liability.

#### a. Affected Population - Vessels

The rule could affect the responsible parties of any vessel (other than a public vessel) from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive

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<sup>35</sup> We expect the simplified regulatory procedure and the clarification of edible oil cargo tank vessels and tank vessels designated as oil spill response vessels to provide a marginal benefit to all responsible parties, including small entities.

economic zone of the United States. This can include vessels owned, operated or demise chartered by small entities.

According to Coast Guard's MISLE database, there are over 200,000 vessels of various types in the vessel population that are not public vessels. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

Coast Guard data indicate that – from the date of enactment of OPA 90 through May 1, 2014 – there were 67 OPA 90 vessel incidents (i.e., an average of approximately three OPA 90 vessel incidents per year) that resulted in OPA 90 removal costs and damages in excess of the Previous Limits of Liability. For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents would continue to occur each year throughout the 10-year analysis period (2016-2025). In addition, although we do not have any way to predict if any of the estimated three incidents per year would involve a small entity, we have assumed that the three vessels involved are owned, operated or demise chartered by small entities.

b. Cost Summary – Vessels

As calculated in the Regulatory Analysis, the average cost of a vessel incident that exceeds its Previous Limit of Liability is approximately \$838,600 but could range from \$85,800 to \$11,368,500. We note that the majority of the incidents, 60 percent, would only have incurred an additional \$85,800 in OPA 90 removal costs and damages. However, in the event that a small entity had a vessel incident which resulted in OPA 90

removal costs and damages above the Previous Limit of Liability in that amount, it would likely have a significant economic impact.

c. Affected Population - Deepwater Ports

As discussed above in Part V.A of this preamble and in the Regulatory Analysis, the only deepwater port affected by the final rule is LOOP. LOOP, however, does not meet the Small Business Administration (SBA) criteria to be categorized as a small entity.<sup>36</sup>

d. Cost Summary – Deepwater Ports

Because there are no small entity deepwater ports, there would be no Regulatory Cost 1 small entity impacts to Deepwater Ports.

e. Affected Population - Onshore Facilities

As discussed above in Part V.A of this preamble and in the Regulatory Analysis, the final rule could affect the responsible parties for any onshore facility.<sup>37</sup> Since the enactment of OPA 90, however, the 2010 Enbridge Pipeline spill in Michigan may well be the only onshore facility incident resulting in OPA 90 removal costs and damages exceeding the previous \$350 million onshore facility limit of liability and that onshore facility is not a small entity. Nevertheless, in the Regulatory Analysis for the rule, we assume that there will be one onshore facility OPA 90 incident occurring over the 10-year analysis period with OPA 90 removal costs and damages exceeding the existing limit of liability.

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<sup>36</sup> LOOP is a limited liability corporation (NAICS Code: 48691001) owned by three major oil companies: Marathon Oil Company, Murphy Oil Corporation, and Shell Oil Company. None of these companies are small entities.

<sup>37</sup> See the OPA 90 definitions of “facility” and “onshore facility” in footnotes 3 and 6, above.

The onshore facility population encompasses dozens of NAICS codes representing diverse industries.<sup>38</sup> It, therefore, would not be practical to predict which specific type or size of onshore facility might be involved in the one hypothetical incident assumed to occur over the 10-year analysis period, or whether it would involve a small entity.

f. Cost Summary – Onshore Facilities

As previously stated above, there has never been a small entity onshore facility incident with OPA 90 removal costs and damage that exceeded the Previous Limit of Liability of \$350 million. However, in the event that a small entity onshore facility were to have an incident with OPA 90 removal costs and damages equal to the New Limit of Liability, that onshore facility would be responsible for an average annual additional cost of \$28,385,000. This would likely have a significant economic impact on the small entity.

2. Regulatory Cost 2: Increase the Cost of Establishing and Maintaining Financial Responsibility

a. Affected Population - Vessels

Regulatory Cost 2 will only apply to vessel responsible parties required to establish and maintain OPA 90 evidence of financial responsibility under 33 U.S.C. 2716 and 33 CFR part 138, subpart A. As of July 3, 2013, there were 1,744 unique entities in the Coast Guard's COFR database that could be affected by the rulemaking. Because of the large number of entities, we determined the statistically significant sample size

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<sup>38</sup> Examples of onshore facilities include, but are not limited to: onshore pipelines; rail; motor carriers; petroleum bulk stations and terminals; petroleum refineries; government installations; oil production facilities; electrical utility plants; electrical transmission lines; mobile facilities; marinas, marine fuel stations and related facilities; farms; residential and commercial fuel tank owners; fuel oil distribution facilities; and gasoline stations.

necessary to represent the population. The appropriate statistical sample size, at a 95 percent confidence level and a 5 percent confidence interval, for the population is 315 entities. This means we are 95 percent certain that the characteristics of the sample reflect the characteristics of the entire population within a margin of error of + or – 5 percent.

Using a random number generator, we then randomly selected the 315 entities from the population for analysis. Of the sample, 309 were businesses, 0 were not-for-profit organizations and 6 were governmental jurisdictions. For each business entity, we next determined the number of employees, annual revenue, and NAICS Code to the extent possible using public and proprietary business databases. The SBA’s publication “U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System codes effective January 22, 2014”<sup>39</sup> was then used to determine whether an entity is a small entity. For governmental jurisdictions, we determined whether they had populations of less than 50,000 as per the criteria in the RFA.

Of the sampled population, 220 would be considered small entities using SBA’s criteria, 72 would not be small entities, and no data was found for the remaining 23 entities.<sup>40</sup> If we assume that entities where no revenue or employee data was found are small entities, then small entities make up 77 percent of the sample.<sup>41</sup> We can then extrapolate the entire population of entities from the sample using the following formula, where “X” is the number of small entities within the total entities in the population.

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<sup>39</sup> [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>40</sup> The 6 governmental jurisdictions were a subset of the 23 entities where no data was found.

<sup>41</sup> The data show that small entities are often responsible parties for multiple vessels.



$(X \text{ small entities in the total population} \div 1,744 \text{ total entities in the population}) = (243 \text{ small entities in the sample} \div 315 \text{ total entities in the sample})$ .

Solving for X, X equals 1,345 small entities within the total population of 1,744 vessel responsible parties.

b. Cost Summary – Vessels

As discussed above in Part V.A. and in the Regulatory Analysis, the rule could increase the cost to vessel responsible parties associated with establishing and maintaining evidence of financial responsibility in three ways:

- Responsible parties using the Insurance method of establishing and maintaining evidence of financial responsibility could incur higher Insurance premiums.
- Some responsible parties currently using the Self-Insurance or Financial Guaranty methods of establishing and maintaining evidence of financial responsibility might need to migrate to the Insurance method for their vessels. This would only be the case if the Self-Insuring responsible parties or Financial Guarantors' financial condition (working capital and net worth) no longer qualified them to establish and maintain evidence of financial responsibility.
- The one responsible party using the Surety Bond method will need to ensure that the amount of the Surety Bonds are adequate to cover OPA 90 removal costs and damages up to the New Limits of Liability. Alternatively, the responsible party could opt to switch to one of the other methods of establishing and maintaining evidence of financial responsibility.

i. Increases to Vessel Insurance Premiums

Based on the data in the Regulatory Analysis above, we have estimated the average annual per-vessel increase in Insurance premiums to be \$300.

$$\$6,450,800 \div 19,724 \text{ vessels} = \$327 \text{ per vessel}$$

$$\text{Rounded to nearest 100} = \$300 \text{ per vessel}$$

The estimated increased cost of establishing evidence of financial responsibility for each small entity is calculated by multiplying the number of vessels using the Insurance method by the average increase in insurance premiums. This calculation was conducted for each small entity. The value was then divided by the annual revenue for the small entity and multiplied by 100 to determine the percent impact of the final rule on the small entities' annual revenue.

- ii. Migration of responsible parties currently using the Self-Insurance and Financial Responsibility Methods of Financial Responsibility to the Insurance Market.

Based on review of financial data of entities using the Self-Insurance or Financial Guaranty method for establishing and maintaining evidence of financial responsibility, Coast Guard subject matter experts estimate that responsible parties for 2 percent of vessels using those two methods would not have the requisite working capital and net worth necessary to qualify for these methods as a result of the rule. In those cases, we assume they will use the Insurance method to establish and maintain evidence of financial responsibility. Based on the data in Part V.A., above, and in the Regulatory Analysis, the estimated average annual cost per vessel of migrating from the Self-insurance/Financial Guaranty methods to the Insurance method is \$5,100.

$$\$564,700 \div 111 \text{ vessels} = \$5,087 \text{ per vessel}$$

Rounded to nearest 100 = \$5,100 per vessel

The increased cost of establishing and maintaining evidence of financial responsibility for each small entity is calculated by:

Multiplying the number of vessels using the Self-Insurance/Financial Guaranty methods by 2 percent and then multiplying by the Average Annual Insurance Premium (\$5,100)

For example, the cost for a small entity responsible party with 100 vessels that would not have the requisite working capital and net worth necessary to use the Self-Insurance or Financial Guaranty method for all of its vessels would be calculated as follows:

(100 vessels using Self-Insurance or Financial Guaranty method x 2 percent of vessels expected to migrate from Self-Insurance or Financial Guaranty method to the Insurance method x \$5,100/year) = \$10,200/year

This calculation was conducted for each small entity. The value was then divided by the annual revenue for the small entity and multiplied by 100 to determine the percent impact of the rule on the small entities' annual revenue.

iii. Increased Cost of Using the Surety Bond Method of Financial Responsibility

As previously noted, there is one responsible party using the Surety Bond method of establishing and maintaining financial responsibility for two vessels. This responsible party is not a small entity. In addition, based on Coast Guard subject matter expertise, we do not expect any other responsible party to use the Surety Bond method during the

analysis period. Because there are no small entities involved, there would be no Regulatory Cost 2 small entity impacts for these two vessels.

c. Affected Population - Deepwater Ports

As discussed above, the only deepwater port potentially affected by the rule is LOOP. LOOP, however, does not meet SBA's criteria to be categorized as a small entity.

d. Cost Summary – Deepwater Ports

Because there are no small entity deepwater ports, there would be no Regulatory Cost 2 small entity impacts to Deepwater Ports.

e. Affected Population - Onshore Facilities

As stated above in Part V.A. and in the Regulatory Analysis, onshore facilities are not required to establish and maintain evidence of financial responsibility under 33 U.S.C. 2716.

f. Cost Summary – Onshore Facilities

Because onshore facilities are not required to establish and maintain evidence of financial responsibility, there are no Regulatory Cost 2 small entity impacts to onshore facilities resulting from this rulemaking.

The figure below shows the economic impact to small entities of Regulatory Cost 2.

**Economic Impact to Small Entities – Regulatory Cost 2**

<b>Percent of Annual Revenue</b>	<b>Extrapolated Number of Small Entities</b>	<b>Percent of Small Entities</b>
1% to 2%	17	1.3%
< 1%	1,328	98.7%

### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

### E. Federalism

A rule has implications for federalism under E.O. 13132 ("Federalism") if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. This final rule makes necessary

adjustments to the OPA 90 limits of liability to reflect significant increases in the CPI, establishes a framework for such future CPI increases, and clarifies the OPA 90 limits of liability for certain vessels. Nothing in this final rule affects the preservation of State authorities under 33 U.S.C. 2718, including the authority of any State to impose additional liability or financial responsibility requirements with respect to discharges of oil within such State. Therefore, it has no implications for federalism.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. The NPRM, therefore, invited anyone who believed this rule has implications for federalism under E.O. 13132 to contact us. We received no such public comment.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

#### H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, (“Civil Justice Reform”), to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### K. Energy Effects

We have analyzed this rule under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory

activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Commandant Instruction M16475.ID, and 67 FR 48243 (July 23, 2002) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule increases the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities to reflect significant increases in the CPI using the methodology established in the CPI-1 Rule. This action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment and is categorically excluded from further environmental documentation under paragraph 6(b) of 67 FR 48243 (July 23, 2002).

#### List of Subjects in 33 CFR Part 138

Financial responsibility, Guarantors, Hazardous materials transportation,



Insurance, Limits of liability, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 138 as follows:

**PART 138 -- FINANCIAL RESPONSIBILITY FOR WATER POLLUTION  
(VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER  
PORTS AND ONSHORE FACILITIES)**

1. The authority citation for part 138 is revised to read as follows:

Authority: 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; 6 U.S.C. 552; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

2. Revise the heading to part 138 to read as set forth above.

3. Revise Subpart B to read as follows:

**Subpart B--OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore  
Facilities)**

Sec.

138.200 Scope.

138.210 Applicability.

138.220 Definitions.

138.230 Limits of liability.

138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes.

**Subpart B--OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities)**

§ 138.200 Scope.

This subpart sets forth the limits of liability under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, et seq.) (OPA 90), for vessels, deepwater ports, and onshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method and procedure the Coast Guard uses to periodically adjust the OPA 90 limits of liability by regulation under OPA 90 (33 U.S.C. 2704(d)(4)), to reflect significant increases in the Consumer Price Index (CPI), and to update the limits of liability when they are amended by statute. In addition, this subpart cross-references the U.S.

Department of the Interior regulation setting forth the OPA 90 limit of liability applicable to offshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)(4)) to reflect significant increases in the CPI.

§ 138.210 Applicability.

This subpart applies to you if you are a responsible party for a vessel, a deepwater port, or an onshore facility (including, but not limited to, motor vehicles, rolling stock and onshore pipelines), unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 138.220 Definitions.

(a) As used in this subpart, the following terms have the meanings set forth in OPA 90 (33 U.S.C. 2701): *deepwater port, facility, gross ton, liability, oil, offshore facility, onshore facility, responsible party, tank vessel, and vessel.*

(b) As used in this subpart—

*Annual CPI–U* means the annual “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100”, published by the U.S. Department of Labor, Bureau of Labor Statistics.

*Current period* means the year in which the Annual CPI–U was most recently published by the U.S. Department of Labor, Bureau of Labor Statistics.

*Director, NPFCC* means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFCC), or that person's authorized representative.

*Edible oil tank vessel* means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(A)).

*Oil spill response vessel* means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(B)).

*Previous period* means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

*Single-hull* means the hull of a tank vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, that is not a double hull as defined in 33

CFR part 157. Single-hull includes the hull of any such tank vessel that is fitted with double sides only or a double bottom only.

§ 138.230 Limits of liability.

(a) *Vessels.* (1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—

(i) For a single-hull tank vessel greater than 3,000 gross tons, the greater of \$3,500 per gross ton or \$25,845,600;

(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,200 per gross ton or \$18,796,800;

(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of \$3,500 per gross ton or \$7,048,800; and

(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,200 per gross ton or \$4,699,200.

(2) The OPA 90 limits of liability for any vessel other than a vessel listed in paragraph (a)(1) of this section, including for any edible oil tank vessel and any oil spill response vessel, are the greater of \$1,100 per gross ton or \$939,800.

(b) *Deepwater ports.* (1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in paragraph (b)(2) of this section, is \$633,850,000;

(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—

(i) For the Louisiana Offshore Oil Port (LOOP), \$96,366,600; and

(ii) [Reserved]

(c) *Onshore facilities.* The OPA 90 limit of liability for onshore facilities, including, but not limited to, motor vehicles, rolling stock and onshore pipelines, is \$633,850,000.

(d) *Offshore facilities.* The OPA 90 limit of liability for offshore facilities other than deepwater ports, including for any offshore pipelines, is set forth at 30 CFR 553.702. § 138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes.

(a) *Update and publication.* The Director, NPFC, will periodically adjust the limits of liability set forth in § 138.230(a) through (c) to reflect significant increases in the Annual CPI-U, according to the procedure for calculating limit of liability inflation adjustments set forth in paragraphs (b)-(d) of this section, and will publish the inflation-adjusted limits of liability and any statutory amendments to those limits of liability in the *Federal Register* as amendments to § 138.230. Updates to the limits of liability under this paragraph are effective on the 90th day after publication in the *Federal Register* of the amendments to § 138.230, unless otherwise specified by statute (in the event of a statutory amendment to the limits of liability) or in the *Federal Register* notice amending § 138.230.

(b) *Formula for calculating a cumulative percent change in the Annual CPI-U.*

(1) The Director, NPFC, calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later (i.e., the previous period), to the most recently published Annual CPI-U ( i.e., the current period), using the following escalation formula:

Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period – Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100.

(2) The cumulative percent change value calculated using the formula in paragraph (b)(1) of this section is rounded to one decimal place.

(c) *Significance threshold.* Not later than every three years from the year the limits of liability were last adjusted for inflation, the Director, NPFC, will evaluate whether the cumulative percent change in the Annual CPI-U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI-U is less than 3 percent, the Director, NPFC, will publish a notice of no inflation adjustment to the limits of liability in the *Federal Register*. If this occurs, the Director, NPFC, will recalculate the cumulative percent change in the Annual CPI-U since the year in which the limits of liability were last adjusted for inflation each year thereafter until the cumulative percent change equals or exceeds the threshold amount of 3 percent. Once the 3-percent threshold is reached, the Director, NPFC, will increase the limits of liability, by regulation using the procedure set forth in paragraph (a) of this section, for all source categories (including any new limit of liability established by statute or regulation since the last time the limits of liability were adjusted for inflation) by an amount equal to the cumulative percent change in the Annual CPI-U from the year each limit was established, or last adjusted by statute or regulation, whichever is later. Nothing in this paragraph shall prevent the Director, NPFC, in the Director's sole discretion, from adjusting the limits of liability for inflation by regulation issued more frequently than every three years.

(d) *Formula for calculating inflation adjustments.* The Director, NPFC, calculates adjustments to the limits of liability in §138.230 for inflation using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability  $\times$  percent change in the Annual CPI-U calculated under paragraph (b) of this section), then rounded to the closest \$100.

Dated: November 3, 2015

William R. Grawe  
Director, U.S. Coast Guard  
National Pollution Funds Center

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